

An. Code, sec. 15. 1904, sec. 15. 1888, sec. 15. 1888, ch. 333. 1896, ch. 184.

**15.** Whenever any person or body corporate shall make an assignment for the benefit of his, her or its creditors, or shall be adjudicated insolvent upon his, her or its petition, or upon the petition of any creditor or creditors, or shall have his, her or its property or estate taken possession of by a receiver under a decree of a court of equity, in the distribution of the property or estate of such person or body corporate, all the money due and owing from such person or body corporate for wages or salaries to clerks, servants, salesmen or employes contracted not more than three months anterior to the execution of such assignment, adjudication of insolvency, or appointment of receiver, shall first be paid in full out of such property or estate, after payment of the proper and legitimate costs, expenses, taxes and commissions, and shall be preferred to all claims against the property and estate of such insolvent person or body corporate, except the lien claims of such persons as shall hold liens upon such property or estate, recorded at least three months prior to such assignment, adjudication or decree.

Commissions due salesmen on sales are preferred under this section. Who is a "salesman." Where the commissions do not fall due until after a receiver is appointed, there is no preference. Meaning of words "money due and owing \* \* \* contracted not more than three months anterior to," etc. The lien of a mortgage recorded over three months before appointment of a receiver has priority over preferred claims for wages. Change in this section by act of 1896, ch. 184. *Balto. Trust Co. v. Rowe*, 141 Md. 160.

A representative of an insurance company in a large territory charged with duties and responsibilities different from those usually required of clerks, employees or salesmen, involving exercise of business judgment and executive ability, held not to come within either of classes designated in this section and not to be a preferred creditor. Relation of debtor and creditor held not to exist between claimant and insolvent corporation; former must show either performance, or lawful excuse for not performing contract before he can recover. *Perkins v. Barr*, 126 Md. 94.

The wages must be due within three months from adjudication, and not from filing of petition. Where an assignment for benefit of creditors is subsequently set aside by insolvency proceedings, the wages preferred are those contracted within three months from adjudication. *Roberts v. Edie*, 85 Md. 183; *Perkins v. Barr*, 126 Md. 94.

This section was designed to create a preference in behalf of certain creditors, and to that extent destroys that equality which is policy of insolvent system. This section held to give a priority over a claim for rent, and also over a judgment. *Hess v. Jewell*, 85 Md. 238.

Claims under this section cannot be paid out of a trust fund devoted to a special purpose. An insurance adjuster does not come under purview of this section. Term "employee" defined and object of this section discussed. Cases distinguished. *Casualty Ins. Company's Case*, 82 Md. 565. And see *Mowen v. Nitsch*, 103 Md. 687; *Wilmer v. Mann*, 121 Md. 247; *Perkins v. Barr*, 126 Md. 94.

An attorney-at-law does not come under the purview of this section. The terms "servant or employee" discussed. *Lewis v. Fisher*, 80 Md. 140; *Wilmer v. Mann*, 121 Md. 247; *Perkins v. Barr*, 126 Md. 94.

Prior to this section, corporations were not subject to our insolvent laws, and this section does not make them so. If this section were so construed, it would be in conflict with art. 3, sec. 29, of the state Constitution. *Ellicott, etc., Co. v. Speed*, 72 Md. 23.

This section referred to by way of illustration. *Parlett v. Dugan*, 85 Md. 410.

An. Code, sec. 16. 1904, sec. 16. 1888, sec. 16. 1854, ch. 193, sec. 14. 1880, ch. 172.

**16.** If the notice to creditors hereby required shall not be given, or if the insolvent shall fail to appear upon any occasion upon which his appear-